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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAMES WANG,

Plaintiff and Appellant,

v.

GOLDEN EAGLE INSURANCE  
COMPANY et al.,

Defendants and Respondents.

B167278

(Los Angeles County  
Super. Ct. No. BC275396)

APPEAL from judgments of the Superior Court of Los Angeles County,  
Gregory W. Alarcon, Judge. Affirmed.

Riley & Reiner, Ira Reiner, Douglas D. Winter and Brad C. Barnholtz for Plaintiff  
and Appellant.

Lindahl, Schnabel, Kardassakis & Beck and Kelley K. Beck for Defendant and  
Respondent Golden Eagle Insurance Company.

Horvitz & Levy, Lisa Perrochet, Jason R. Litt, Tharpe & Howell, Timothy D.  
Lake, Jeffrey C. Lynn and Christopher J. Kidston for Defendant and Respondent Fire  
Insurance Exchange.

James Wang appeals summary judgments in favor of Golden Eagle Insurance Company (Golden Eagle) and Fire Insurance Exchange (Fire) in a declaratory relief action. Wang contends the insurers had a duty to defend him in an action for malicious prosecution, intentional infliction of emotional distress, and defamation. He contends the superior court erred by concluding that (1) there was no accident and no occurrence within the meaning of the policies because the claims against Wang in the underlying action alleged intentional conduct, and (2) the designated premises limitation of one of the Golden Eagle policies precludes coverage. Wang also contends other grounds asserted for the summary judgment motions do not support the summary judgments. We reject these contentions and affirm the judgments.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Hou's Complaint and Wang's Tender of Defense***

Hein Jen Hou (Hou) sued Wang and others in August 2000 alleging that the defendants falsely accused Hou of forcible rape causing him to be arrested in July 1999 and incarcerated for 30 days, until a court dismissed the criminal charges. Hou also alleged that the defendants falsely accused him of fraudulently obtaining money from them and that they falsely stated that Hou impregnated a woman who then had an abortion. Hou alleged that the defendants made statements concerning rape and fraud to the police and made statements concerning rape, fraud, and an abortion "to various members of the Buddhist community in Southern California." Hou's complaint alleged counts against Wang for malicious prosecution, intentional infliction of emotional distress, and defamation.

Wang tendered the defense of the action to Golden Eagle and Fire in February 2002 claiming a potential for coverage under two insurance policies issued by Golden Eagle, a commercial general liability (CGL) policy and a garage operations policy, and under a homeowners insurance policy issued by Fire. Both insurers refused to defend or indemnify Wang.

## 2. *Wang's Complaint*

Wang filed a complaint for declaratory relief against Golden Eagle and Fire in June 2002 alleging that the insurers had a duty to defend and indemnify him. The complaint alleges that Wang first met Hou when Hou visited Wang's automobile dealership, C. H. Auto, to inquire about vehicle prices for resale. It alleges that Wang is active in the Chinese community and the Chinese Buddhist community and is president of the Chinese American Auto Association. It alleges that one of Hou's female accusers, with whom Wang previously was not acquainted, requested Wang's assistance in contacting the police, and that Wang provided assistance. It also alleges that a press conference took place at Wang's automobile dealership pertaining to the accusations against Hou.

## 3. *Wang's Summary Judgment Motion and Hou's Amended Complaint*

Wang moved for summary judgment or summary adjudication against Hou's complaint in September 2002, in the Hou action. Hou moved to amend the complaint to include additional allegations of defamation arising from a dinner party in March 2001. The court granted the motion to amend the complaint, denied summary judgment, granted summary adjudication against the malicious prosecution count, and denied summary adjudication against the counts for intentional infliction of emotional distress and defamation.

## 4. *Summary Judgments*

Golden Eagle and Fire each moved for summary judgment in this action in December 2002. Wang opposed the motions and moved to amend the complaint to allege potential coverage based on the alleged defamatory statements of March 2001.

The superior court concluded that personal injury liability coverage in the Golden Eagle CGL policy was limited to claims arising from the ownership, maintenance, or use of designated premises. The court concluded that Golden Eagle presented evidence sufficient to satisfy its initial burden of showing that the claims did not arise from the ownership, maintenance, or use of the premises and that Wang failed to present admissible evidence to the contrary. The court therefore concluded that there was no

potential coverage for personal injury liability. The court concluded further that coverage for bodily injury and property damage liability in the CGL policy and garage operations policy was expressly limited to bodily injury and property damage caused by an “accident.” The court concluded that the claims against Wang arose from intentional conduct rather than accidental conduct, and therefore concluded that there was no potential coverage for bodily injury or property damage liability. The court therefore granted summary judgment in favor of Golden Eagle.

The court concluded that coverage for bodily injury or property damage liability under the Fire homeowners policy was expressly limited to bodily injury or property damage resulting from an “occurrence,” defined in relevant part as “an accident.” The court concluded that the claims against Wang alleged intentional conduct rather than accidental conduct, and therefore concluded that there was no potential coverage for bodily injury or property damage liability. The court therefore granted summary judgment in favor of Fire. The court also concluded that Wang’s proposed new allegations would not overcome these deficiencies, and denied Wang’s motion for leave to amend the complaint.

The court entered judgments in favor of Golden Eagle and Fire. Wang appealed the judgments.

### ***CONTENTIONS***

Wang contends with respect to the Golden Eagle policies (1) Golden Eagle failed to show that there is no possibility of coverage for personal injury liability under the CGL policy because it did not negate the possibility that the claims arose from the ownership, maintenance, or use of the designated premises; (2) although the Hou complaint alleged intentional conduct, the facts alleged in the complaint and other facts did not negate the possibility that Wang would be held liable for negligent conduct constituting an accident and an occurrence within the coverage of the CGL policy and the garage operations policy; (3) the CGL policy expressly provided coverage for personal injury arising out of malicious prosecution or defamation, and excluded coverage for defamation only if the statement was made with knowledge of its falsity, so there is a potential for coverage for

the conduct alleged in Hou's complaint; and (4) the other grounds for Golden Eagle's motion do not support the summary judgment.

Wang contends with respect to the Fire policy (1) the facts alleged in the complaint and other facts do not negate the possibility that Wang could be held liable for negligent conduct constituting an occurrence within the coverage of the homeowners policy; and (2) the other grounds for Fire's motion do not support the summary judgment.

Golden Eagle contends additional grounds support the summary judgment apart from those relied on by the trial court, including (1) Hou did not allege an injury caused by an offense arising from Wang's business within the meaning of the CGL policy; (2) Hou's claims were not based on Wang's conduct as a director, employee, or shareholder of Pro Sharp Corp. as required for coverage under the garage operations policy; (3) Hou did not allege an injury resulting from "garage operations" as required for coverage under the garage operations policy; and (4) Hou did not allege liability for bodily injury within the meaning of the garage operations policy.

Fire contends (1) Hou did not allege liability for bodily injury within the meaning of the homeowners policy; and (2) Hou's alleged injuries did not arise from an accident, so there was no occurrence within the meaning of the policy.

### ***DISCUSSION***

#### *1. Standard of Review*

A party is entitled to summary judgment if under the undisputed facts or facts as to which there is no reasonable dispute the party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at pp. 849, 854-855.) If the defendant satisfies this burden, the burden shifts to the plaintiff to set forth "specific facts" showing that a triable issue of material fact exists. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 849.) The court must view the evidence and reasonable inferences from the evidence in the light most favorable to the opposing party. (*Aguilar*,

at p. 843.)

We review the trial court's ruling de novo and apply the same legal standard that governs the trial court. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 67-68.) We affirm the ruling if it is correct on any ground, regardless of the trial court's stated reasons. (*Truck Ins. Exchange v. County of Los Angeles* (2002) 95 Cal.App.4th 13, 20.)

## 2. *Duty to Defend*

An insurer has a duty to defend the insured in an action if the complaint alleges facts, or the insurer becomes aware of facts, that potentially could subject the insured to liability for covered damages. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 19; *Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 295-296.) Those facts need only "raise the possibility" that the insured will be held liable for covered damages. (*Montrose*, at p. 304.) An insurer has a duty to defend even if the claims against the insured are " 'groundless, false, or fraudulent.' " (*Waller*, at p. 19.) An insurer has no duty to defend only if (1) under the facts alleged in the complaint and facts known to the insurer, there is no possibility that the insured could be held liable for covered damages, or (2) undisputed facts extrinsic to the complaint conclusively eliminate the potential for coverage. (*Waller*, at p. 19; *Montrose*, at p. 300.) "Any doubt as to whether the facts establish the existence of the defense duty must be resolved in the insured's favor." (*Montrose*, at pp. 299-300.) Although the duty to defend is broad, it cannot be based on mere speculation that facts giving rise to a covered liability may exist or may be alleged in the future. (*Gunderson v. Fire Ins. Exchange* (1995) 37 Cal.App.4th 1106, 1114.)

## 3. *Interpretation of an Insurance Policy*

Interpretation of an insurance policy is a question of law. (*Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1115.) We interpret an insurance policy using the ordinary rules of contract interpretation. (*Ibid.*) The mutual intent of the parties to the contract at the time the contract was formed governs. (Civ. Code, § 1636; *Palmer*, at p. 1115.) We ascertain that intent solely from the written contract, if possible. (Civ. Code, § 1639; *Palmer*, at p. 1115.) We consider the policy as a whole and construe the

language in context, rather than interpret a provision in isolation. (Civ. Code, § 1641; *Palmer*, at p. 1115.) If contractual language is clear and explicit and does not involve an absurdity, the plain meaning governs. (Civ. Code, § 1638, *Palmer*, at p. 1115.) Contractual language is ambiguous and there is no plain meaning only if the language is susceptible of more than one reasonable interpretation. (*Palmer*, at p. 1115.)

Coverage reasonably expected by the insured can be limited by an exclusionary clause provided that the clause is “ ‘conspicuous, plain and clear.’ ” (*Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1204.)

4. *The Golden Eagle and Fire Insurance Policies*

a. *CGL Policy*

Golden Eagle issued a CGL insurance policy identifying Wang and James Wang Building as the named insureds. The declarations page stated that the “Business Description” was “property owner.” (Capitalization omitted.) The policy provided coverage for bodily injury and property damage liability (Coverage A) and personal injury and advertising injury liability (Coverage B).

The Coverage A insuring agreement stated that Golden Eagle would pay sums that the insured became legally obligated to pay as damages because of bodily injury or property damage caused by an “occurrence.” The policy defined “bodily injury” as “bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.” The policy defined “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

The Coverage B insuring agreement stated that Golden Eagle would pay sums that the insured became legally obligated to pay as damages because of personal injury “caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you,” or advertising injury “caused by an offense committed in the course of advertising your goods, products, or services.” The policy defined “personal injury” as “injury, other than ‘bodily injury,’ arising out of one or more of the following offenses: [¶] a. False arrest, detention or imprisonment; [¶] b. Malicious prosecution; [¶] c. The wrongful eviction from, wrongful entry into, or

invasion of the right of private occupancy of a room . . . ; [¶] d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or [¶] e. Oral or written publication of material that violates a person's right of privacy.”

The policy exclusions precluded coverage for bodily injury or property damage “expected or intended from the standpoint of the insured.” The exclusions also precluded coverage for personal injury or advertising injury arising from an oral or written publication made “by or at the direction of the insured with knowledge of its falsity.” The policy also included an endorsement limiting all coverage to injury or loss arising from “[t]he ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises.” The schedule in the endorsement identified the premises as the James Wang Building located in San Jacinto, California.

b. *Garage Operations Policy*

Golden Eagle also issued an insurance policy providing coverage for commercial property and garage operations. The named insured was “Pro Sharp Corp.” dba C. H. Auto. The declarations page stated that the “Business Description” was “used car dealership.” (Capitalization omitted.) The policy identified the property locations by street addresses in Rosemead, California.

The garage operations insuring agreement stated that Golden Eagle would pay all sums that the insured became legally obligated to pay as damages because of bodily injury or property damage either (a) “caused by an ‘accident’ and resulting from ‘garage operations’ other than the ownership, maintenance or use of covered ‘autos.’ ” or (b) “caused by an ‘accident’ and resulting from ‘garage operations’ involving the ownership, maintenance or use of covered ‘autos.’ ” The policy defined “bodily injury” as “bodily injury, sickness or disease sustained by a person including death resulting from any of these.” The policy defined “garage operations” as “the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. ‘Garage operations’ includes the ownership, maintenance or use of the ‘autos’ indicated in SECTION I of this Coverage Form as covered ‘autos.’ ”



‘Garage operations’ also include all operations necessary or incidental to a garage business.” For purposes of coverage for garage operations other than covered autos, the policy defined “Insureds” to include the named insured’s “partners, employees, directors or shareholders but only while acting within the scope of their duties.”

c. *Homeowners Policy*

Fire issued a homeowners insurance policy with Wang as the named insured. The policy provided coverage for property damage or loss pertaining to Wang’s principal residence in Alhambra, California and for personal liability. The insuring agreement stated that Fire would pay “damages which an insured becomes legally obligated to pay because of bodily injury or property damage resulting from an occurrence to which this coverage applies.” The policy defined “bodily injury” as “bodily harm, sickness or disease, including care, loss of services and death resulting from that injury.” The policy defined “occurrence” in pertinent part as “an accident including exposure to conditions which results during the policy period in bodily injury or property damage.”

The policy exclusions precluded coverage for bodily injury or property damage “aris[ing] from or during the course of business pursuits of an insured.” (Emphasis omitted.) The exclusions also precluded coverage for bodily injury or property damage “caused intentionally by or at the direction of an insured,” or “result[ing] from any occurrence caused by an intentional act of any insured where the results are reasonably foreseeable.” (Emphasis omitted.)

5. *There Is No Potential for Coverage of Personal Injury Liability Under the CGL Policy*

Hou alleged that Wang and others falsely accused him of forcible rape causing him to suffer arrest and incarceration, falsely accused him of fraudulently obtaining money from them, and committed malicious prosecution and defamation. These allegations fit squarely within the definition of “personal injury” in the CGL policy, quoted in section 4.a. *ante*. That definition includes injury arising from “[f]alse arrest, detention or imprisonment,” “[m]alicious prosecution,” slander, or libel.

Golden Eagle’s CGL policy provided coverage for personal injury liability only if

the injury was “caused by an offense arising out of your business.” “Arising out of” and similar language when used to describe the scope of coverage ordinarily is construed broadly and requires only a minimal causal connection. (*Acceptance Ins. Co. v. Syufy Enterprises* (1999) 69 Cal.App.4th 321, 328.) A policy exclusion limited coverage to injury or loss arising from “[t]he ownership, maintenance or use of [the James Wang Building] and operations necessary or incidental to those premises.”

The facts alleged in Hou’s complaint did not suggest that Wang’s accusations were causally connected with Wang’s business as owner of the James Wang Building or that Hou’s injury arose from the ownership, maintenance, or use of the building. Hou did not allege that Wang had business dealings with Hou in connection with the James Wang Building, and the alleged accusations concerning rape, fraud, and an abortion did not suggest any connection with the James Wang Building. We therefore conclude that Golden Eagle satisfied its burden as the party moving for summary judgment by showing that under the allegations in Hou’s complaint Wang could not be held liable for personal injury damages covered by the CGL policy.

Wang presented no extrinsic evidence in opposition to the motion suggesting that Hou’s claims related to the James Wang Building in any manner, but merely argued that Golden Eagle failed to negate the possibility that the claims related to the building. Wang’s argument that there is a possibility that the alleged offenses arose from his business as owner of the James Wang Building and arose from the ownership, maintenance, or use of the building is based on speculation without any support in either Hou’s complaint or extrinsic evidence. We conclude that the facts alleged in the complaint and the evidence presented in connection with the summary judgment motion do not create the possibility that the alleged offenses arose from Wang’s business as owner of the James Wang Building or that Hou’s injury arose from the ownership, maintenance, or use of the building. We therefore conclude that there is no potential for coverage of personal injury liability under the CGL policy and no corresponding duty to

defend.<sup>1</sup>

6. *There Is No Potential for Coverage of Bodily Injury Liability Under the CGL Policy, the Garage Operations Policy, or the Homeowners Policy*

Golden Eagle's CGL policy provided coverage for bodily injury liability only if the injury was "caused by an 'occurrence.'" The policy defined "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." The policy defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The policy excluded coverage if the bodily injury was "expected or intended from the standpoint of the insured."

An "accident" in this context is an unexpected and unintended act, as distinguished from an unexpected and unintended injury or consequence of an act. (*Quan v. Truck Ins. Exchange* (1998) 67 Cal.App.4th 583, 598.) An injury therefore was caused by an occurrence within the meaning of the CGL policy only if the injury was caused by an unexpected and unintended act. The fact that an insured performed an intentional act does not preclude an occurrence if an unexpected and unintended act also occurred and contributed to the injury. (*Ibid.*) There was no accident and no occurrence only if all of the acts contributing to the injury were intended or expected from the standpoint of the insured. (*Merced Mutual Ins. Co. v. Mendez* (1989) 213 Cal.App.3d 41, 50.)

Hou's complaint alleged that the defendants falsely reported to the police that Hou committed forcible rape, defrauded the defendants, and made "statements . . . to various members of the Buddhist community in Southern California" concerning rape, fraud, and an abortion. Hou's complaint alleged that Wang knowingly and maliciously falsely accused Hou. These allegations do not admit the possibility that Wang's alleged conduct was unintentional and therefore do not create the possibility that Wang could be held

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<sup>1</sup> We need not decide whether the court's consideration of the Adam Woellert declaration, despite Wang's objections, was error. Summary adjudication was proper regardless of whether the declaration was admissible.

liable for unintentional conduct, or an “occurrence,” within the CGL policy coverage. Wang presented no evidence in opposition to the summary judgment motion suggesting that Hou’s claims were based on unintentional conduct, but merely argued that Golden Eagle failed to negate the possibility that Wang could be held liable for unintentional conduct. Wang’s argument that he could be held liable for unintentional conduct is based on speculation without any basis in either Hou’s complaint or extrinsic evidence. We therefore conclude that there is no potential for coverage of bodily injury liability under the CGL policy and no corresponding duty to defend.

The definitions of bodily injury in Golden Eagle’s garage operations policy and Fire’s homeowner’s policy are substantially the same as the definition of that term in the CGL policy. Our conclusion that there is no possibility that Wang could be held liable to Hou for unintentional conduct, or an “occurrence,” within the meaning of the CGL policy applies equally to the garage operations and homeowner policies. We therefore conclude that there is no potential for coverage of bodily injury liability under the garage operations policy or the homeowners policy and no duty to defend. In light of our conclusions, we need not address the parties’ other contentions.

***DISPOSITION***

The judgments are affirmed. Golden Eagle and Fire are entitled to recover their costs on appeal.

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KITCHING, J.

We concur:

CROSKEY, Acting P.J.

ALDRICH, J.